

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

FEB 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to Facilitate)
Future Development of SMR)
Systems in the 800 MHz)
Frequency Band)
)
Implementation of Sections 3(n)) GEN Docket No. 93-252
and 322 of the Communications Act)
Regulatory Treatment of)
Mobile Services)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act --)
Competitive Bidding)

To: The Commission

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COMMENTS OF CONSUMERS POWER COMPANY

The Consumers Power Company ("Consumers"), by its attorneys and pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits these Comments in response to the Commission's Second Further Notice of Proposed Rule Making ("Second FNPRM") released in the above-captioned proceeding.^{1/}

^{1/} First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, FCC 95-501, released December 15, 1995. A summary of the Second FNPRM, as (continued...)

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Preliminary Statement

1. Consumers is the largest energy utility in the state of Michigan. It provides electric power and/or natural gas to the 68 counties on Michigan's lower peninsula. Consumers' operating territory stretches from Detroit in the southeast portion of the state, to Dowagiac in the southwest, and to Cheboygan in the north, an area totaling approximately 31,000 square miles. Within this expanse, Consumers serves over 2,300,000 people.

2. To better serve its customers in a safe, dependable and efficient manner, Consumers is in the multi-year process of licensing and constructing an 800 MHz land mobile radio system throughout its entire service territory. As an eligible in the Power Radio Service, Consumers employs Industrial/Land Transportation category channels, as well as frequencies obtained from other non-commercial categories through intercategory sharing provisions. Consumers designed this wide-area system to meet its increasing communications requirements and to handle its extensive customer service dispatch operations. Once completed, the

^{1/}(...continued)

well as the text of the proposed rules, had not been published in the Federal Register as of the date of this filing.

system will have over 3,200 mobile, portable, and control units, and over 60 base station sites.

3. Consumers primarily uses its land mobile radio system to enable its work crews to communicate with the company's headquarters when they are out in the field responding to power outages, gas leaks, service requests and related troubles. In this regard, the ability of Consumers' employees to communicate at all times is essential in light of their frequent work with extremely high voltage wires, high pressure gas mains, and other features of Consumers' operational infrastructure. Additionally, the ability of Consumers' crews to respond quickly and efficiently to power outages is vital to Consumers' customers, especially to hospitals and other emergency health care providers which depend on life support systems and emergency response equipment.

Comments

4. In the First Report and Order portion of this proceeding, the Commission has decided to convert the 150 General Category channels to the SMR Category. In the instant Second FNPRM, the Commission proposes to convert the General Category channels to geographic area licensing on an

"Economic Area" (EA) basis. While the Second FNPRM does not impose mandatory relocation on SMR incumbents within the General Category and "lower 80" channels, the Commission seeks comment on the question of whether non-SMR General Category incumbents, such as Consumers, should or should not be subject to mandatory relocation.

5. The Second FNPRM briefly addresses the use of General Category and lower 80 SMR channels in the border areas, stating that EA licensees would be entitled to use any available border area channels, subject to the rules regarding international assignment. The Commission proposes not to make any distinction between border and non-border areas for licensing purposes, "even if some spectrum is "unusable."^{2/} Across Consumers' service territory, for example, which spans both border and non-border regions, a single 800 MHz channel may be designated in two or more categories, or may be unavailable altogether at certain locations.

6. Consumers respectfully requests that the Commission in auctioning 800 MHz spectrum in the Canadian border area carefully consider that, pursuant to the Commission's 1982 rules establishing 800 MHz categories,

^{2/}

Second FNPRM, ¶ 319.

there are no General Category channels in the Canadian border areas encompassing Regions 3 and 7. In these border regions, the 150 General Category channels were divided among the three non-commercial categories and the SMR service.^{3/} Since these border allocations were made in 1982 without reference to the General Category, the Commission should strongly clarify in the final rules adopted as a result of this proceeding that auction and licensing procedures do not apply to the border regions.^{4/}

7. These necessary clarifications take on particular importance when set against the realities of "EA" licensing and the need to provide a real measure of co-channel protection to incumbent operations. EAs 57 (Detroit) and 58 (Northern Michigan) comprise most of Regions 3 and 7. The

^{3/} In Region 3, closest to the Canadian border and surrounding Detroit, the 85 Industrial/Land Transportation channels available for assignment are derived mostly from what is known outside the border regions as the "General Category." In Region 7, which runs in a parallel band due west of Region 3, a significant portion of the 120 Industrial/Land Transportation channels available for assignment are derived from what is known outside the border regions as the "lower 80" SMR channels. See Rule 90.619(b)(7)-(11).

^{4/} The same analysis applies to use of the lower 80 SMR channels in border regions. For example, in Region 7, the 190 SMR category channels are derived from a small number of General Category channels, modest numbers of lower 80 channels and channels from the non-commercial categories, and a large number of upper 200 channels. Even in Region 3, where almost all of the 135 SMR channels derive from the upper band, 15 channels are derived from the General Category, Industrial/Land Transportation and Public Safety categories.

territory comprising EAs 61 (Traverse City) and 62 (Grand Rapids) are mostly non-border areas. In the absence of a strong Commission statement emphasizing the non-availability of the "standard" channels in border areas, entrepreneurs may bid up the prices of EA's in Region 3 and Region 7, discover to their disappointment the absence of commercial spectrum, and then lobby the Commission to provide the auction winners "something" of value.^{5/}

8. Co-channel separation issues take on particular importance since General Category/lower 80 channels that may be auctioned pursuant to the proposed rules will be co-channel with Consumers wide-area system. A General Category co-channel located near a regional boundary may impact Consumers' co-channel Industrial/Land Transportation operation. Accordingly, we urge the Commission to emphasize that full primary co-channel protection pursuant to the standards of Section 90.621(b) must be afforded by non-border area auction winners to co-channel Industrial/Land Transportation category licensees.

^{5/} A review of bidding activity for the 900 MHz MTA SMR auction reveals what may be interpreted as a pattern of irrationally high bidding for heavily encumbered blocks in several MTAs. This pattern holds despite FCC rules protecting incumbents and imposing stringent construction requirements. For the 800 MHz border regions, Consumers fears lobbying pressure from auction winners may erode co-channel protection for incumbent non-SMR licensees.

9. The specialized nature of Consumers' wide-area 800 MHz system also merits a high level of co-channel protection. Consumers' system relies heavily on spectrum efficient channel re-use. Thus, channels employed in Regions 3 and 7 are not only heavily re-used inside and across the regions, they are also heavily used in the non-border areas. Consumers' is a wide area system and, as such, it employs control channels and other specialized operations that must be protected. Interference to a single channel in the system can have a disproportionately large negative impact on system operations. It becomes even more important in this instance that geographic area licensees that may be authorized under the Commission's proposal protect operations near regional boundaries.

10. The Second FNPRM solicits comments as to whether non-SMR incumbents should be subject to mandatory relocation. Consumers believes that several points lead to the conclusion that under no circumstances should non-SMR incumbents be subject to mandatory relocation. First, the Commission does not propose to subject SMR incumbents to relocation. Accordingly, it would not be equitable or reasonable to insist that non-SMR entities be forced to relocate. Second, Consumers' 800 MHz operations constitute a wide-area system -- its channels are assigned to the

Industrial/Land Transportation category in Regions 3 and 7. Relocation of any of the company's non-border area frequencies that are on the lower 80 or the General Category channels will have a devastating impact on Consumers' carefully balanced wide area system. Third, relocation would essentially punish Consumers for operating a highly spectrum-efficient system that intensively re-uses sets of frequencies throughout the wide-area network.

11. Should the Commission determine, nonetheless, that non-SMR entities should be subject to mandatory relocation, Consumers urges that the Commission provide a series of safeguards to protect critical wide-area systems. These safeguards are derived from the Commission's SMR relocation rules for the upper 200 channels enumerated in this proceeding's First Report and Order. These safeguards include: (a) relocation at a minimum to comparable facilities, with relocation to upgraded (premium) facilities explicitly permitted and encouraged;^{6/} (b) all or nothing system relocation to non-SMR category spectrum; (c) notification by the EA licensee of its intention to

^{6/} Payments for facilities that may be better than comparable should be reimbursable amongst several EA licensees, especially considering the wide-area nature of the system. In this instance, premium payments for consulting, engineering and legal fees incurred by the incumbent during all stages of the relocation process should be reimbursable amongst all EA licensees.


request relocation within 90 days of the start of any voluntary negotiation period; (d) the right of the incumbent to insist that all EA licensees negotiate with it together; and (e) a seamless cut-over from existing operations to relocated operations -- a critical element for utility systems upon which public health and safety rely.

WHEREFORE, THE PREMISES CONSIDERED, Consumers Power Company urges the Commission to consider these Comments and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: February 15, 1996